

HOUSE BILL 1394

By Wirgau

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13 and Title 68, Chapter 11, relative to vulnerable persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following language as a new part:

68-11-2101. As used in this part:

- (1) "Adult" means an individual who is eighteen (18) years of age or older;
- (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease;
- (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician, consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate healthcare decisions to healthcare providers, including communication through persons familiar with the patient's manner of communicating if those persons are available;
- (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease;
- (5) "Counseling" means one (1) or more consultations as necessary between a psychiatrist licensed pursuant to title 63, chapter 6, or psychologist licensed pursuant to title 63, chapter 11, and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment;

(6) "Department" means the department of health;

(7) "Healthcare facility" means any institution, place or building providing healthcare services that is required to be licensed under this chapter;

(8) "Healthcare provider" means a person licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a healthcare facility;

(9) "Informed decision" means a decision by a qualified patient to request and obtain a prescription to end the patient's life in a humane and dignified manner that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(A) The patient's medical diagnosis;

(B) The patient's prognosis;

(C) The potential risks associated with taking the medication to be prescribed;

(D) The probable result of taking the medication to be prescribed; and

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control;

(10) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records;

(11) "Patient" means a person who is under the care of a physician;

(12) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the board of medical examiners pursuant to title 63, chapter 6, or title 63, chapter 9;

(13) “Qualified patient” means a capable adult who is a resident of this state and has satisfied the requirements of this part in order to obtain a prescription for medication to end the adult’s life in a humane and dignified manner; and

(14) “Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six (6) months.

68-11-2102.

(a) An adult who is capable, is a resident of this state, and has been determined by an attending physician and a consulting physician to be suffering from a terminal disease, and who has voluntarily expressed the wish to die, may make a written request for medication for the purpose of ending the adult’s life in a humane and dignified manner in accordance with this part.

(b) No person shall qualify under this part solely because of age or disability.

68-11-2103.

(a) A valid request for medication under this part must be substantially in the form described in § 68-11-2121, signed and dated by the patient and witnessed by at least two (2) individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(b) One (1) of the witnesses shall be a person who is not:

(1) A relative of the patient by blood, marriage, or adoption;

(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will, if known, or by operation of law; or

(3) An owner, operator, or employee of a healthcare facility where the qualified patient is receiving medical treatment or is a resident.

(c) The patient's attending physician at the time the request is signed shall not be a witness.

(d) If the patient is a patient in a long-term care facility at the time the written request is made, one (1) of the witnesses must be an individual designated by the facility. The department shall promulgate rules governing the qualifications of an individual designated as a witness by a long-term care facility pursuant to this subsection

(d). Rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-11-2104. The attending physician shall:

(1) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;

(2) Request that the patient demonstrate Tennessee residency pursuant to § 68-11-2113;

(3) To ensure that the patient is making an informed decision, inform the patient of:

(A) The patient's medical diagnosis;

(B) The patient's prognosis;

(C) The potential risks associated with taking the medication to be prescribed;

(D) The probable result of taking the medication to be prescribed; and

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control;

(4) Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is capable and acting voluntarily;

(5) Refer the patient for counseling, if appropriate, pursuant to § 68-11-2106;

(6) Recommend that the patient notify next of kin;

(7) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to this part and of not taking the medication in a public place;

(8) Inform the patient that the patient has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period pursuant to § 68-11-2109;

(9) Verify, immediately prior to writing the prescription for medication under this part, that the patient is making an informed decision;

(10) Fulfill the medical record documentation requirements of § 68-11-2112;

(11) Ensure that all appropriate steps are carried out in accordance with this part prior to writing a prescription for medication to enable a qualified patient to end the patient's life in a humane and dignified manner; and

(12)

(A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort. The attending physician must be registered as a dispensing physician with the board of pharmacy and the board of medical examiners, have a current drug enforcement administration certificate, and comply with any applicable rule; or

(B) With the patient's written consent:

(i) Contact a pharmacist and inform the pharmacist of the prescription; and

(ii) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to the patient, the attending physician, or an expressly identified agent of the patient.

68-11-2105. Before a patient is qualified under this part, a consulting physician shall examine the patient and the patient's relevant medical records. The consulting physician shall confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

68-11-2106. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician must refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

68-11-2107. No person shall receive a prescription for medication to end the person's life in a humane and dignified manner unless the person has made an informed decision. Immediately prior to writing a prescription for medication under this part, the attending physician shall verify that the patient is making an informed decision.

68-11-2108. The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication pursuant to this part. A patient who declines or is unable to notify next of kin shall not have the patient's request denied for that reason.

68-11-2109.

(a) In order for a qualified patient to receive a prescription for medication to end the patient's life in a humane and dignified manner, a qualified patient must:

(1) Make an initial oral request to the patient's attending physician;

(2) Make a written request to the patient's attending physician; and

(3) Make a second oral request to the patient's attending physician no less than fifteen (15) days after making the initial oral request.

(b) At the time the qualified patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

68-11-2110. A patient may rescind a request at any time and in any manner without regard to the patient's mental state. No prescription for medication under this part shall be written without the attending physician offering the qualified patient an opportunity to rescind the request.

68-11-2111.

(a) No less than fifteen (15) days shall elapse between the patient's initial oral request pursuant to § 68-11-2109(a)(1) and the writing of a prescription under this part.

(b) No less than forty-eight (48) hours shall elapse between the patient's written request pursuant to § 68-11-2109(a)(2) and the writing of a prescription under this part.

68-11-2112. The following must be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end the patient's life in a humane and dignified manner;

(2) All written requests by a patient for medication to end the patient's life in a humane and dignified manner;

(3) The attending physician's diagnosis, prognosis, and determination that the patient is capable, acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis, prognosis, and verification that the patient is capable, acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind the patient's request at the time of the patient's second oral request pursuant to § 68-11-2109(b); and

(7) A note by the attending physician indicating that all requirements of this part have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

68-11-2113. Only requests made by residents of this state pursuant to this part shall be granted. Facts demonstrating Tennessee residency include, but are not limited to:

- (1) Possession of a Tennessee driver license;
- (2) Registration to vote in this state;
- (3) Evidence that the person owns or leases property in this state; or
- (4) Other evidence deemed sufficient pursuant to rules promulgated by the department.

68-11-2114.

(a)

(1) The department shall annually review a sample of records maintained pursuant to this part.

(2) The department shall require any healthcare provider, upon dispensing medication pursuant to this part, to file a copy of the dispensing record with the department.

(b) The department shall make rules to facilitate the collection of information regarding compliance with this part. The information collected is not a public record for the purposes of title 10, chapter 7, and shall not be made available for inspection by the public.

(c) The department shall generate and make available to the public an annual statistical report of information collected under subsection (a).

68-11-2115.

(a) No provision in a contract, life insurance policy, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end the person's life in a humane and dignified manner, shall be valid.

(b) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end the person's life in a humane and dignified manner.

(c) This section applies to contracts, policies, wills, or agreements entered into or renewed on or after the effective date of this act.

68-11-2116. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end the person's life in a humane and dignified manner. Nor shall a qualified patient's act of ingesting medication to end the patient's life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy.

68-11-2117. Nothing in this part authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purpose, constitute suicide, assisted suicide under § 39-13-216, mercy killing, or homicide under title 39, chapter 13, part 2.

68-11-2118.

(a) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this part. This includes being present when a qualified patient takes the prescribed medication to end the patient's life in a humane and dignified manner.

(b) No professional organization or association, or healthcare provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this part.

(c) No request by a patient for, or provision by an attending physician of, medication in good faith compliance with this part shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(d) No healthcare provider shall be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to end the patient's life in a humane and dignified manner. If a healthcare provider is unable or unwilling to carry out a patient's request under this part, and the patient transfers the patient's care to a new healthcare provider, the prior healthcare provider must transfer, upon request, a copy of the patient's relevant medical records to the new healthcare provider.

(e)

(1) Notwithstanding any other law, a healthcare provider may prohibit another healthcare provider from participating in this part on the premises of the prohibiting provider if the prohibiting provider has notified the healthcare provider of the prohibiting provider's policy regarding participating in this part. Nothing in this subdivision (e)(1) prohibits a healthcare provider from providing to a patient healthcare services that do not constitute participation in this part.

(2) Notwithstanding subsections (a)-(d), a healthcare provider may subject another healthcare provider to the following sanctions if the sanctioning

healthcare provider has notified the sanctioned provider prior to participation in this part that the sanctioning provider prohibits participation in this part:

(A) Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the sanctioning healthcare provider, if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this part while on the healthcare facility premises of the sanctioning healthcare provider, but not including the private medical office of a physician or other provider;

(B) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this part while on the premises of the sanctioning healthcare provider or on property that is owned by or under the direct control of the sanctioning healthcare provider; or

(C) Termination of contract or other nonmonetary remedies provided by contract, if the sanctioned provider participates in this part while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning healthcare provider. Nothing in this subdivision (e)(2)(C) prevents:

(i) A healthcare provider from participating in this part while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(ii) A patient from contracting with the patient's attending physician and consulting physician to act outside the course and

scope of the provider's capacity as an employee or independent contractor of the sanctioning healthcare provider.

(3) A healthcare provider that imposes sanctions pursuant to subdivision (e)(2) shall follow all due process and other procedures the sanctioning healthcare provider may have that are related to the imposition of sanctions on another healthcare provider.

(4) For purposes of this subsection (e):

(A) "Notify" means a separate statement in writing to the healthcare provider specifically informing the healthcare provider prior to the provider's participation in this part of the sanctioning healthcare provider's policy about participation in activities covered by this part;

(B) "Participate in this part":

(i) Means to perform the duties of an attending physician pursuant to § 68-11-2104, the consulting physician function pursuant to § 68-11-2105, or the counseling function pursuant to § 68-11-2106; and

(ii) Does not include:

(a) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(b) Providing information about this part to a patient upon the request of the patient;

(c) Providing a patient, upon the request of the patient, with a referral to another physician; or

(d) A patient contracting with the patient's attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning healthcare provider.

(f) Suspension or termination of staff membership or privileges under subsection (e) is not reportable to the board of medical examiners for disciplinary purposes or by the applicable quality improvement committee to any other quality improvement committee. Action taken pursuant to § 68-11-2103, § 68-11-2104, § 68-11-2105, or § 68-11-2106 must not be the sole basis for a report of immoral, unethical, unprofessional, or dishonorable conduct.

(g) No provision of this part allows a lower standard of care for patients in the community where the patient is treated or a similar community.

68-11-2119.

(a) A person who, without authorization of the patient, willfully alters or forges a request for medication, or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death, commits a Class A felony.

(b) A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of a request, commits a Class A felony.

(c) Nothing in this part limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(d) The penalties in this part do not preclude criminal penalties applicable under other law for conduct which is inconsistent with this part.

68-11-2120. Any governmental entity that incurs costs resulting from a person terminating the person's life pursuant to this part in a public place has a claim against the estate of the person to recover costs and reasonable attorney fees related to enforcing the claim.

68-11-2121. A request for medication as authorized by this part must be in substantially the following form:

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE
AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress, fraud, or undue influence;
- (d) Is not a patient for whom either of us is the attending physician.

_____ Witness 1/Date

_____ Witness 2/Date

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

68-11-2122.

(a) It is a Class A felony for a person without authorization of the principal to willfully alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal.

(b) Except as provided in subsection (a), it is a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a healthcare decision.

SECTION 2. Tennessee Code Annotated, Section 39-13-216(b), is amended by adding the following language as a new subdivision:

() Provide medication to a qualified patient for the purpose of ending the patient's life in a humane and dignified manner pursuant to title 68, chapter 11, part 21.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 4. This act shall take effect July 1, 2017, the public welfare requiring it.